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EXHIBITS: 0
FOR I.D.: 0

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT
NO. 2282CR00117

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COMMONWEALTH OF MASSACHUSETTS *
*
-v- *
*
KAREN READ *
* * * * *

SIDEBARS FROM BEGINNING OF DAY ON JUNE 20, 2024

RULINGS IN OPEN COURT RE: VOIR DIRE

BEFORE: HONORABLE BEVERLY CANNONE
Norfolk Superior Courthouse
Dedham, Massachusetts 02108
June 20, 2024

Adam Lally, Assistant District Attorney, and
Laura McLaughlin, Assistant District Attorney
On behalf of the Commonwealth of Massachusetts

David Yannetti, Attorney at Law, Alan Jackson, Attorney at
Law, and Elizabeth Little, Attorney at Law
On behalf of Karen Read

NANCY M. KING, CVR
OFFICIAL COURT REPORTER
SUFFOLK SUPERIOR COURT

I N D E X

SIDEBAR

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E X H I B I T SNUMBERDESCRIPTIONPAGE

(None.)

P R O C E E D I N G S

JUNE 20, 2024

EXCERPT:

(Court and counsel in at 9:06 a.m. with no jury)

THE CLERK: May I call the case, Your Honor?

THE COURT: Yes, please.

THE CLERK: For the record, before the Court is Commonwealth vs. Karen Read, 2282CR00117. The parties are present, the jury is not present.

Counsel has asked to see you.

THE COURT: Did you want to see me at sidebar?

MR. YANNETTI: Briefly at sidebar or in open court.

THE COURT: Why don't I see you up here.

MR. YANNETTI: Sure.

SIDEBAR CONFERENCE:

THE COURT: Good morning.

1 MR. YANNETTI: Good morning, Your
2 Honor. Mr. Lally on Tuesday provided basically a
3 list and the documents that he intends to
4 introduce or use through Trooper Guarino.

5 THE COURT: Okay.

6 MR. YANNETTI: There's one entry in
7 particular that we are objecting to.

8 THE COURT: Do you have it with you?
9 Why don't you grab it.

10 MR. YANNETTI: He has it. I'll just
11 get my reading glasses up here.

12 THE COURT: Okay. Maybe you keep them
13 in your pocket?

14 MR. YANNETTI: I should, yes, but then
15 they'd get crushed, Your Honor.

16 THE COURT: So Mr. Lally, why don't you
17 tell me what this is?

18 MR. LALLY: Well, Your Honor,
19 essentially the -

20 THE COURT: You need to keep your voice
21 up.

22 MR. LALLY: Sure.

23 THE COURT: Especially flipping the
24 pages near the microphone. It drives the court

1 reporter crazy.

2 MR. LALLY: My apologies.

3 Your Honor, what this is is part of the
4 extraction report from the defendant's phone with
5 a web search history. In particular, there are
6 web searches that the defendant does at 1 p.m. on
7 the 29th in respect to - the one in particular
8 that I'm looking for is essentially 'DUI lawyers
9 near me'.

10 THE COURT: Okay.

11 MR. LALLY: So what I had done is I had
12 sent this to counsel and to the Court just to
13 flag it because I wanted to avoid a lengthy
14 sidebar conference with the jury in the room,
15 understanding that I think it's admissible. I
16 think it goes, you know, as far as what the Court
17 has to consider is whether it's more probative
18 and overly prejudicial, and assuming that counsel
19 would object to it, I just wanted to raise it for
20 the Court before we got to this point.

21 THE COURT: I appreciate that. What's
22 your objection?

23 MR. YANNETTI: So my objection, Your
24 Honor, is in part based on the timing of this

1 search because no such search was done until she
2 received a call from Trooper Michael Proctor.
3 Once she received a call from the State Police,
4 she didn't google criminal defense attorneys or
5 murder defense attorneys or homicide defense
6 attorneys. She googled DUI defense attorneys
7 after having heard from the police.

8 It did not lead to her hiring me. She
9 didn't find me in that search. And it was only
10 done after she got contact from the police which,
11 you know, you get a call from the State Police,
12 and not only is it your right to be represented,
13 but anybody with half a brain would -

14 THE COURT: I'm familiar -

15 MR. YANNETTI: Of course, of course.

16 THE COURT: All right, so I'm going to
17 keep it out in your case in chief.

18 MS. McLAUGHLIN: Your Honor, if I may?

19 THE COURT: Yes.

20 MS. McLAUGHLIN: I do have cases to
21 support its admission as to probative value. I
22 do think in this case it exceeds the prejudicial
23 value. It's not a typical case where the
24 defendant claims they committed an accident. The

1 defense is that the defendant's vehicle never
2 struck John O'Keefe. It goes to rebutting a
3 *Bowden* defense. It goes to rebutting the
4 improprieties of what the defense claims of the
5 investigation. It goes against the allegation
6 that the defendant has been framed. In these
7 circumstances, the probative value does exceed
8 the prejudicial value, and I do have two cases to
9 support the admission of it from the
10 Commonwealth's standpoint.

11 Further, at the time of the search, the
12 defendant is legally intoxicated that morning.
13 It goes to her state of mind that she begins to
14 sober up in the afternoon, perhaps understanding
15 what may have occurred. So I do think it's
16 relative and highly probative to her state of
17 mind at the time the search is conducted.
18 Further, it's prior to her having sat down and
19 voluntarily giving that interview to the State
20 Police.

21 THE COURT: That's a different
22 argument.

23 MR. YANNETTI: Not really. What
24 relevance is it that somebody intends to defend

1 the presumption of innocence? What is the
2 inference that the Commonwealth is asking this
3 jury to draw? They're asking this jury to draw
4 that the police contact her, she was out the
5 previous night, and they're asking to infer guilt
6 or consciousness of guilt by virtue of the fact
7 that she seeks out representation.

8 MS. McLAUGHLIN: I can give you
9 citations.

10 THE COURT: Go ahead and continue, Mr.
11 Yannetti.

12 MR. YANNETTI: Well, no, I'm just
13 reading over the bench here, and I notice, first
14 of all that at least one of the cases deals with
15 the standard of a substantial risk of a
16 miscarriage of justice in terms of how they
17 decided the case. I would like an opportunity to
18 review those cases.

19 THE COURT: Sure. All right, so we can
20 address this at the morning break.

21 So again, Ms. McLaughlin, tell me the
22 reasons - rebutting the *Bowden* defense, tell me
23 the reasons that you think this is, because as
24 you know under that footnote in *Samia* I have to

1 make a little bit more of a record here.

2 MS. McLAUGHLIN: Yes, Your Honor. I
3 think this is an unusual circumstance where the
4 defense has been that the defendant's vehicle
5 never struck John O'Keefe, that she's being
6 framed for these charges, that there is no
7 evidence of any type of motor vehicle offense or
8 any intent to commit any of these crimes.

9 THE COURT: Slow down.

10 MS. McLAUGHLIN: Essentially someone
11 else - what the defense has represented is that
12 she's being framed, and perhaps the dog is what
13 inflicted the injuries. This google search
14 rebuts the defense of one, she's been framed. It
15 goes to her state of mind, and also rebuts the
16 *Bowden* defense that, as the defendant has
17 claimed, that the police did not do a proper
18 search, they did not search and investigate any
19 other individuals. It goes to the fact that
20 there is compelling evidence that the defendant
21 is the only one culpable for John O'Keefe's death
22 and her state of mind hours after becoming aware
23 that John has passed.

24 THE COURT: So Ms. McLaughlin, what I

1 would like from you is a proposed instruction as
2 to what I tell the jury, and typically bad acts I
3 tell them it can only be for this particular
4 purpose. You're asking me to tell them, and I
5 have not decided yet whether I'm going to.

6 MR. YANNETTI: If I can have an
7 opportunity to be heard?

8 THE COURT: Of course. I want you to
9 read the cases. I'm familiar with *Keown*, but I
10 want to read the other.

11 MR. YANNETTI: Sure.

12 THE COURT: So this isn't something any
13 of us should rush into. So I really appreciate
14 you flagging it, Mr. Lally.

15 So I'd like you to tell me what
16 specifically you would like me to tell the jury
17 that they can consider this for. So you're not
18 even saying consciousness of guilt at this point,
19 right?

20 MS. McLAUGHLIN: I am, I am. It does
21 go to her consciousness of guilt.

22 THE COURT: If I give this instruction
23 and if I say it goes to consciousness of guilt,
24 I'd like the defense to let me know whether they

1 would like me to give a consciousness of guilt
2 instruction at the same time or later. So this
3 is what I want you all to do so we can have
4 another discussion on this.

5 MR. YANNETTI: Sure, sure.

6 THE COURT: And this is the extraction
7 of the phone, so the defense has had this.

8 MS. McLAUGHLIN: The defense has had it
9 longer than the Commonwealth has had access to
10 this. So I'd say they've had the information
11 approximately two years.

12 MR. YANNETTI: We haven't raised that
13 issue in our objection.

14 THE COURT: No, that's what I was
15 wondering, because I was told it might have been
16 a discovery violation that we would be here on.
17 So what is the date and time of the search?
18 1/29, but what time?

19 MS. McLAUGHLIN: January 29, 2022.

20 THE COURT: Right. But what time?

21 MR. LALLY: 1:24 p.m.

22 THE COURT: And Mr. Yannetti, you say
23 this is after Proctor has called her?

24 MR. YANNETTI: I believe it's about

1 five minutes later.

2 THE COURT: When he called her or he
3 showed up?

4 MR. YANNETTI: No. He calls her at
5 1:19, I believe that was the time.

6 THE COURT: All right, so get all of
7 this for me. We can take more time. We can take
8 a longer break or, you know, an issue break. I
9 think this sort of falls on Ms. Little and Ms.
10 McLaughlin to just go through everything. You
11 seem to be the ones that have immediate access to
12 the records to find these things out. So if you
13 could just find that out, the time that Proctor
14 called her. I don't know that's in evidence now?

15 MR. YANNETTI: Not yet.

16 THE COURT: About Proctor calling her
17 at that time?

18 MR. YANNETTI: Correct, not yet. It's
19 not yet in evidence, but it will be.

20 THE COURT: Through who?

21 MR. YANNETTI: Through Guarino.

22 THE COURT: Oh, okay, so you're going
23 to touch upon that anyway, regardless of what
24 this is?

1 MR. YANNETTI: Only for the purpose of
2 the time of that call and there were no google
3 searches prior to him calling.

4 THE COURT: Even if I don't admit this
5 you're going to do that?

6 MR. YANNETTI: Not if it causes the
7 Court to admit that.

8 THE COURT: No, it doesn't cause me to
9 admit it.

10 MR. YANNETTI: Even if it militates in
11 that favor, I don't see why it would.

12 THE COURT: No, I just wanted clarity
13 whether you intended - you said it's not in
14 "yet".

15 MR. YANNETTI: If I can just talk it
16 over.

17 THE COURT: Yes.
18 (Defense counsel confer.)

19 MR. YANNETTI: I will defer to my co-
20 counsel and report that the only reason we would
21 need that in is if they try to get in the search.

22 COURT REPORTER: "They try to" what?
23 I'm sorry.

24 MR. YANNETTI: To bring the other

1 search in, the 1:24 search in.

2 THE COURT: You banged that while you
3 said that.

4 MR. YANNETTI: I'm sorry.

5 THE COURT: Okay, so that's different
6 angle, and your co-counsel caught it.

7 MR. YANNETTI: Yes.

8 THE COURT: All right. So we will
9 address those not before the break, and if you --
10 How much longer do you have with him?

11 MR. LALLY: I have roughly an hour.

12 THE COURT: Okay. So we make sure we
13 take the break?

14 MR. LALLY: I'll alert the Court if I
15 have nothing else but that.

16 THE COURT: Okay. There is a slight
17 possibility, maybe more than slight, that what I
18 have scheduled tomorrow afternoon might have to
19 be continued, and we can maybe get a full day in,
20 which would be great. So we don't know. Unless
21 you can't; unless your witnesses can't based on
22 what we have. If there's a single juror who made
23 plans, then we won't.

24 MS. LITTLE: We just - I think we'll

1 need a ruling. We'll probably just need a ruling
2 in terms of our experts because that's a large
3 bulk of our witnesses to see who we can get here
4 tomorrow if that's the case.

5 THE COURT: Did you not plan on having
6 anybody here tomorrow?

7 MS. LITTLE: No, we did.

8 MR. YANNETTI: We can have Rick Green
9 here tomorrow. He's our second witness.

10 MR. JACKSON: If I may?

11 THE COURT: Yes.

12 MR. JACKSON: As it pertains to Doctor
13 Russell, she would be right after that, so that's
14 the only thing that -

15 THE COURT: So I -

16 MR. JACKSON: We could make
17 arrangements to get her quickly. I just need to
18 sort of know.

19 THE COURT: Well, she's local now,
20 right?

21 MR. JACKSON: In New York-ish.

22 THE COURT: All right, so I will say
23 just briefly what my rulings are now on what
24 happened with the voir dire. I'll do that in

1 open court now, and we can line up the jurors.
2 Are we all set on this issue?

3 MR. LALLY: Yes.

4 THE COURT: And again, I appreciate you
5 flagging it, and I appreciate you giving me
6 copies of the cases. And we'll take a decent
7 morning break.

8 MR. YANNETTI: Okay, sounds good.

9 MR. JACKSON: And Your Honor, I don't
10 expect a ruling right now, but I am going to ask
11 the Court pretty quick the parameters of closing
12 argument. We're getting to that direction, and I
13 need to know for my purposes kind of how much
14 time we're going to have.

15 THE COURT: An hour. No more than an
16 hour. No more than an hour. I've never done
17 more than an hour. I've never - Massachusetts,
18 one hour is the limit it seems. The jury has
19 heard it.

20 MR. JACKSON: Even in a case this
21 complex? I wasn't going to ask for four hours.
22 I was going to ask for two.

23 THE COURT: Not two hours; one hour. I
24 have had cases that are more complex that have

1 been one hour. One hour. It's a challenge for
2 you, but -

3 MR. JACKSON: It is. In this case it
4 is.

5 THE COURT: I know these lawyers can do
6 it. That's where I'm at. So we can discuss it
7 again when we have the charge conference. But
8 that's where I'm at.

9 Is the Commonwealth looking for two
10 hours as well?

11 MR. LALLY: No.

12 THE COURT: Because you're used to an
13 hour.

14 MR. JACKSON: You're not helping, Adam.

15 MR. LALLY: I'm sorry.

16 THE COURT: All right. So we'll make
17 it quick. I'm going to line the jurors up. I'll
18 let you know where I stand as of now.

19 MR. JACKSON: Okay, good.

20 MR. LALLY: Thank you, Your Honor.

21 THE COURT: We can line them up.

22 **END SIDEBAR CONFERENCE.**

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IN OPEN COURT WITH NO JURY PRESENT:

THE COURT: So moving on to the voir dire motion the other day, the voir dire hearing. In response to the Commonwealth's renewed motion for reciprocal discovery and motion to exclude defendant's expert, Doctor Marie Russell.

So the Commonwealth was alleging violations of Rule 14's reciprocal discovery requirement, and the Commonwealth asked for exclusion of Doctor Russell. I did find and do find that there was a violation of the reciprocal discovery obligations of the defendants. I was looking for a remedy. You called it a sanction, Mr. Jackson, but I called it a remedy. And I did tell counsel, as you know, at sidebar a couple of times at least last week that I did not want to exclude the testimony if I did not have to.

So we had the voir dire, and I am satisfied that the voir dire provided the Commonwealth the information that the defense should have provided the Commonwealth. So I am going to allow Doctor Russell to testify, but her testimony is very limited. And I think you even sort of acknowledged it the other day, Mr.

1 Jackson. So she will be allowed only to opine
2 whether or not the marks on John O'Keefe's arm
3 were the result of an animal attack.

4 I find that she is a medical doctor,
5 she is an experienced ER doctor, albeit several
6 years ago since she's worked in that capacity,
7 that she does have specialized knowledge in that
8 field that may assist the jury in this regard.
9 But she can't testify as an expert on police
10 activity. There'll be none of that. And she
11 will not be able to testify as to what the
12 injuries are inconsistent with.

13 She cannot testify that they are
14 inconsistent with having been struck by a
15 vehicle, road rash, scratches from broken glass
16 or taillight matter or anything else. That's
17 beyond the scope of what she can testify to.

18 The second part of the Commonwealth's
19 motion, the Commonwealth argued that they were
20 not provided reciprocal discovery regarding the
21 biomechanical engineers and others, but
22 specifically ARCCA, Doctor Wolfe and Doctor
23 Rentschler. And I do find, though I understand
24 why the defense didn't respond, but it is a

1 violation of Rule 14, so we had this voir dire.
2 The Commonwealth was looking to see what each
3 person did, their independent opinion, what their
4 testimony would be, and whether they were
5 qualified to render the opinions that they
6 qualified.

7 So from what I heard the other day, Dr.
8 Wolfe can testify to his involvement. Doctor
9 Rentschler, though, I have some concerns. It's
10 clear to me that in Massachusetts biomechanical
11 engineers are not qualified to testify as to
12 medical causation of an injury. Only an M.D. can
13 do that. So I'm going to reserve ruling on the
14 rest of his testimony. There are certain things
15 he can testify, and I'll hear you again before he
16 testifies next week. Let's just proceed with the
17 trial today.

18 MR. JACKSON: Yes, Your Honor. Thank
19 you.

20 THE COURT: So those are my rulings.
21 Are they clear, Mr. Jackson?

22 MR. JACKSON: They're clear, Your
23 Honor.

24 THE COURT: Are they clear, Mr. Lally?

1 MR. LALLY: Yes, Your Honor.

2 THE COURT: All right, so are we ready?

3 COURT OFFICER: All rise. Jurors

4 entering.

5 **END OF EXCERPT.**

6 **TRIAL RESUMES; SEE SEPARATE TRANSCRIPT.**

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C E R T I F I C A T E:

I, Nancy M. King, CVR, Official Per Diem Court Reporter, do hereby certify that the previous pages 1 - 22 represent a true and accurate record of **an EXCERPT** from proceedings heard on Thursday, June 20, 2024, to the best of my knowledge, skill and ability.

This transcript **SHALL NOT** be provided to any party without approval from the Court, Honorable Beverly Cannone.

/s/Nancy M. King

Nancy M. King

Per Diem Court Reporter

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